# TRIGGER WARNING

### PIC Solvency advocate

#### “Public colleges and universities in the United States ought to expand the view of sexual violence violations to include revenge pornography as harassment and restrict it accordingly.” Rennison & Addington 14 is the solvency advocate:

[Callie Rennison (associate professor in the School of Public Affairs at the University of Colorado Denver) and Lynn Addington (associate professor in the Department of Justice, Law & Criminology, School of Public Affairs at American University in Washington, DC), “Violence Against College Women: A Review to Identify Limitations in Defining the Problem and Inform Future Research” *Trauma, Violence, & Abuse*. July 2014. Vol. 15, no. 3. Pgs. 159-169. <http://tva.sagepub.com/content/15/3/159.full#sec-11>] SF

The current violence against college women literature has expanded knowledge about the prevalence and characteristics of sexual violence occurring on campus. These findings, in turn, have been translated into policies designed to reduce this form of violence and assist victims. Additional work has considered the prevalence and characteristics of dating violence and stalking against college women and also has informed specific programmatic development on campuses. Despite these advances, our review of the literature identifies three important gaps that limit defining violence against college women and arguably inhibit future development in this area. The most critical gap or limitation is the lack of any assessment of the literature to consider the current approaches of how violence is defined and operationalized. This assessment would help identify whether behaviors are missing that should be included as well as promote a current and comprehensive understanding violence against college women. The two other limitations are not as directly related to defining violence but would assist in conducting such a reassessment. The second limitation concerns the need to provide a context for the victimization experiences of college women, especially the importance of comparing these experiences with those of young adult women who are not students. A third, and related, limitation concerns a need to consider how “college student” is defined and measured. The first limitation concerns the failure to explicitly define violence as it is used in the area of violence against college women. As a result, researchers tend to implicitly define violence against college women as synonymous with sexual violence and to a lesser extent dating violence and stalking. No effort has been made to take stock of the scope of this definition and reassess how well the construct has been operationalized. In addition, no explicit discussion has occurred with regard to whether using a criminal justice perspective or a public health perspective would assist in defining violence in this area. As a result, the violence against college women area has evolved to incorporate aspects of both perspectives but also has failed to fully embrace aspects of either. For example, if a criminal justice perspective was accepted, this view would encourage inclusion of other forms of violent crime such as robbery and nonsexual assaults that are currently absent from the literature. Similarly if a public health perspective were utilized, this focus would expand the study to emerging forms of violence that may or may not be criminalized such as so-called revenge porn (or the posting of intimate and explicit photographs online) and other forms of online reputational harm as well as forms of criminal behavior that are committed by intimates such as cyberstalking or identity theft (which can generate significant emotional harm).

### Disad

#### Revenge porn is protected

Goldberg 16: FREE SPEECH CONSEQUENTIALISM Author(s): Erica Goldberg Source: Columbia Law Review, Vol. 116, No. 3 (APRIL 2016), pp. 687-756 Published by: Columbia Law Review Association, Inc. Stable URL: http://www.jstor.org/stable/43783393 Accessed: 27-03-2017 18:49 UTC Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 201

The regulation of revenge porn presents thorny First Amendment issues, even though the speech is considered both highly injurious and of low value.300 **Some argue that revenge porn can be regulated as obscenity,**301 **but, like much pornography, sexually explicit speech that does not rise to the level of obscenity is still protected speech**.302 Criminal statutes and torts based on the invasion of privacy and emotional distress caused by revenge porn compromise the freedom to speech lawfully obtained. Indeed, **the Supreme Court has recognized a right for the media to publish even unlawfully obtained content, so long as the publisher was not involved in the illegal so long as the publisher was not involved in the illegal conduct that produced the content**.303 **And in United States v. Stevens , the Supreme Court held that individuals cannot be held criminally liable for distributing speech depicting illegal acts, so long as the individuals did not perpetrate the underlying act.**304 **Revenge porn, as defined here, is both legally obtained and depicts a legal act**. In the ultimate articulation of free speech consequentialism, **Mary Anne Frank argues for criminalization of revenge porn because “some expressions** of [free speech] **are just considered so** social**ly** harm**ful and don’t contribute any benefits to society**.”305 **Yet this does not separate revenge porn from any number of categories of protected speech that may cause others emotional distress and are considered by some to posess little value**; this is nothing more than a call for judges to make wholesale and retail judgements about the value and harms that flow from particular forms of speech. **If revenge porn can be regulated, legislators should not target the victim’s emotional distress or the invasion of privacy, as these focal points threaten to undermine strong free speech protections** exceptional to America’s free speech regime. **Privacy cannot be a focal point for regulating revenge porn because America’s conception of privacy distinguishes between governmental intrusions and individual intrusions of privacy.**306 **The regulation of individual intrusions on privacy generally must yield to First Amendment concerns**.307 This favoritism of free speech over privacy is what separates America from other Western democracies.308 **The United States allows individuals wide latitude to publish truthful (yet embarrassing or accusatory) information about each other** and preserves spaces for autonomy as against the government far more than against other individuals.309 The European Union’s “right to be forgotten,” which allows individuals to sue to have embarrassing articles removed from search engines, could never exist in America.310 America’s approach allows individuals choices as to how they conduct their private interactions with others, separate from the reach of the government.311 Further, there is not a principle way to create, at the wholesale level, an unprotected category of speech around revenge porn. **The law cannot prohibit the telling of secrets**, which are also generally told with either explicit or implicit understanding that the secret will not be revealed to others.312 Analogously, the underlying fact that someone took naked pictures should be protected speech even if the resulting images are regulable. However, it is likely that couples would still date and engage in intimate behavior even knowing their partners are likely to gossip to friends; it is much less likely that the content of revenge pornography would be produced knowing that it would be publicly available. As a result, if the costs of revenge porn so far exceed its benefits that revenge porn fits into the rare case where free speech consequentialism should prevail, states would have to narrowly tailor their laws to target the action of breaching an excess or implied promise.313

#### The Supreme Court is attitudinally against new categories for 1st amendment exemption and revenge porn is not exempt now – prefer competition based on the existing state of affairs instead of revenge porn’s conceptual competition because that’s the world the aff is fiated within.

**Koppelman 16:** [Andrew Koppelman (Professor of Law and Political Science, Department of Philosophy Affiliated Faculty, Northwestern University), “Revenge Pornography and First Amendment Exceptions” Emory Law Journal. Vol. 65, Issue 3. Spring 2016. <http://law.emory.edu/elj/content/volume-65/issue-3/articles/revenge-pornography-first-amendment-exceptions.html#section-35580fdd00221bfb07d70388531cea1a>] SF

These laws restrict speech on the basis of its content. Content-based restrictions (unless they fall within one of the categories of unprotected speech) are invalid unless necessary to a compelling state interest. 4 **The state’s interest in prohibiting revenge pornography, so far from being compelling, may not even be one that the state is permitted to pursue.** **The central harm that such a prohibition aims to prevent is the acceptance**, by the audience of the speech, **of the message that this person is degraded and appropriately humiliated** because she once displayed her naked body to a camera. **The harm, in other words, consists in the acceptance of a viewpoint. Viewpoint-based restrictions on speech are absolutely forbidden**. 5 **There are exceptions to the ban on content-based restrictions: the Court has held that the First Amendment does not protect incitement, threats, obscenity, child pornography, defamation of private figures, criminal conspiracies, and criminal solicitation, for example. 6** No**ne of those exceptions is** appli**cable here.** The pathologies of **revenge pornography** I have just described are the product of entirely new technologies: digital photography and the Internet. Because it is so new, however, **it is not a category of speech that has traditionally been denied First Amendment protection.** The Court has recently announced that unless speech falls into such a category, it is fully protected**. There can be no new categories of unprotected speech.** **Laws prohibiting revenge pornography thus violate the First Amendment as the Court now understands it**. **The crux of the problem is the Court’s announced** unwilling**ness to create new categories of non-protection.**

#### CP solves – deters perpetrators and creates a cultural shift.

**Citron and Franks 14** Danielle Keats Citron, Mary Anne Franks. "CRIMINALIZING REVENGE PORN" 4/21/2014 <https://www.law.yale.edu/system/files/area/center/isp/documents/danielle_citron_-_criminalizing_revenge_porn_-_fesc.pdf> Danielle Keats Citron is a Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law; Affiliate Scholar, Stanford Center on Internet and Society; Affiliate Fellow, Yale Information Society Project. Mary Anne Franks is an Associate Professor of Law, University of Miami School of Law.

As this discussion shows, civil law cannot meaningfully deter and redress revenge porn. We now turn to the potential for a criminal law response. III. CRIMINAL LAW’S POTENTIAL TO COMBAT REVENGE PORN **A** criminal **law solution is essential to deter** judgment-proof **perpetrators**. As attorney and revenge porn expert Erica Johnstone puts it, “[e]ven if **people** aren’t afraid of being sued because they have nothing to lose, they **are afraid** of being convicted of a crime **because that shows up on their record forever**.”68 **Nonconsensual pornography’s rise is** surely **related to the fact that malicious actors have little incentive to refrain from such behavior**. While some critics believe that existing criminal law adequately addresses nonconsensual pornography, this Part highlights how existing criminal law fails to address most cases of revenge porn. A. The Importance of Criminal Law Criminal law has long prohibited privacy invasions and certain violations of autonomy. Criminal **law is essential to send the clear message to potential perpetrators that nonconsensual pornography inflicts grave privacy and autonomy harms that have real consequences and penalties**.69 While we share general concerns about over-incarceration, rejecting the criminalization of serious harms is not the way to address those concerns. We are also sensitive to objections that criminalizing revenge porn might reinforce the harmful and erroneous perception that women should be ashamed of their bodies or their sexual activities, but maintain that recognizing and protecting sexual autonomy does exactly the opposite.70 **A criminal law solution would send the message that individuals’ bodies** (mostly female bodies) **are their own and that society recognizes the grave harms that flow from turning individuals into objects of pornography without their consent**. In this way, **a criminal law approach will help us conceptualize the involuntary publication of someone’s sexually explicit images as a form of sexual assault**. When sexual abuse is inflicted on an individual’s physical body, it is considered rape or sexual assault. The fact that nonconsensual pornography does not involve physical contact does not change the fact that it is a form of sexual abuse. Federal and state criminal laws regarding voyeurism demonstrate that physical contact is not necessary to cause great harm and suffering. Video voyeurism laws punish the nonconsensual recording of a person in a state of undress in places where individuals enjoy a reasonable expectation of privacy. 71 Criminal laws prohibiting voyeurism rest on the commonly accepted assumption that observing a person in a state of undress or engaged in sexual activity without that person’s consent not only inflicts dignitary harms upon the individual observed, but also inflicts a social harm serious enough to warrant criminal prohibition and punishment. International criminal law provides precedent and perspective on this issue. Both the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) have employed a definition of sexual violence that does not require physical contact. In both tribunals, forced nudity was found to be a form of sexual violence.72 In the Akayesu case, the ICTR found that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.” 73 In the Furundzija case, the ICTY similarly found that international criminal law punishes not only rape, but also “all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim’s dignity.”74 **The legal and social condemnation of child pornography exemplifies our collective understanding that the production, viewing, and distribution of certain kinds of sexual images are harmful**. In New York v. Ferber,75 the United States Supreme Court recognized that the distribution of child pornography is distinct from the underlying crime of the sexual abuse of children.76 The Court observed that “[t]he distribution of photographs and films depicting sexual activity by juveniles . . . [is] a permanent record of the children’s participation and the harm to the child is exacerbated by their circulation.”77 When images and videos of sexual assaults and surreptitious observation are distributed and consumed, they inflict further harms on the victims and on society connected to, but distinct from, the criminal acts to which the victims were originally subjected.78 The trafficking of this material increases the demand for images and videos that exploit the individuals portrayed. This is why the Court in Ferber held that it is necessary to shut down the “distribution network” of child pornography to reduce the sexual exploitation of children: “The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.”79 Nonconsensual pornography raises similar concerns. **Disclosing sexually explicit images without permission can have lasting and destructive consequences**. Victims often feel shame and humiliation every time they see them and every time they think that others are viewing them. Consider the experience of sports reporter Erin Andrews. After a stalker secretly taped her while she undressed in her hotel room, he posted as many as ten videos of her online.80 Google Trends data suggested that just after the release of the videos, much of the nation began looking for some variation of “Erin Andrews peephole video.”81 Nearly nine months later, Andrews explained: “I haven’t stopped being victimized—I’m going to have to live with this forever . . . . When I have kids and they have kids, I’ll have to explain to them why this is on the Internet.”82 She further lamented that when she walks into football stadiums to report on a game, she faces the taunts of fans who have seen her naked online.83 She explained that she “felt like [she] was continuing to be victimized” each time she talked about it.84 Andrews’s experience is echoed by that of Lena Chen, who allowed her ex-boyfriend to take pictures of them having sex. 85 After he betrayed her trust and posted the pictures online, the pictures went viral.86 As Chen explained, feeling ashamed of her sexuality was not something that came naturally to her, but it is now something she knows inside and out. 87 Victims of nonconsensual pornography are harmed each time a person views or shares their intimate images. B. Current Criminal Law’s Limits Existing federal and state criminal laws have limited application to the initial posters of nonconsensual pornography and the laws have even less force with regard to site operators. This Subpart first explores the potential of criminal harassment statutes in pursuing the original discloser. Then, it turns to the possibility of extortion and child pornography charges against revenge porn site operators.

#### Revenge porn is the Internet evolution of stalking and begets real stalking. It is constitutively psychological harassment. Robertson 15:

[Hope Robertson (3L student at Campbell Law School), “The Criminalization of Revenge Porn” *Campbell Law Observer*. July 21, 2015. <http://campbelllawobserver.com/the-criminalization-of-revenge-porn/>] SF

With the advancement of the Internet and continued heightened sexualization of younger generations, Revenge Porn will never go away.  However, just like any other crime, making the act illegal will hopefully deter both the posters and the website hosts.  Some will start to balance the satisfaction gained from posting the photos against criminal punishment and a criminal record, and decide posting these photos is not worth it.  Unlike consensual pornography, the only goal of posting Revenge Porn is to humiliate and harass the subject.  It is the cyber equivalent of sexual harassment and stalking, which are already illegal.  Photos on the Internet never go away; thus focusing efforts towards liability only after photos are posted should not be the ultimate goal.  Legislation should work towards deterring people from posting the photos and hosting these websites in the first place.  Criminal codes across the nation should catch up with technology and culture by criminalizing Revenge Porn practices of both those who create the websites and those who post on the websites.

#### Revenge Pornography is inherently sexist – there is no debate. Filipovic 13:

[Jill Filipovic (Journalist) “’Revenge Porn’ Is About Degrading Women Sexually and Professionally.” The Guardian, 2013. Accessed 11/10/14. <http://www.theguardian.com/commentisfree/2013/jan/28/revenge-porn-degrades-women>] SF

Society sees it differently – at least when the nude photo is of a woman. **There aren't popular revenge porn sites with pictures of naked men, because as a society we don't think it's** inherently **degrading or humiliating for men to have sex.** Despite the fact that large numbers of women watch porn, **there are apparently not large numbers of women who find sexual gratification in publicly shaming and demeaning men they've slept with. And that is, fundamentally, what these revenge porn sites are about. They aren't about naked girls;** there are plenty of those who are on the Internet consensually. **It's about hating women, taking enjoyment in seeing them violated, and harming them.**

## 2nr competition debate

#### Framing issue – the Supreme Court determines exceptions to Constitutionally protected speech – its protected unless there’s a specific exemption in play.

Shapiro 1 (Professor Shapiro, University of Mainz, "Freedom of Speech", https://home.ubalt.edu/shapiro/rights\_course/Chapter4text.htm, 2001)

IV. FREEDOM OF SPEECH The First Amendment provides that: “Congress shall make no law…abridging the freedom of speech…” This language has not received a literal interpretation by the Supreme Court. On the one hand, the coverage of the amendment is broader than the language implies. To begin with, the First Amendment applies to more than just Congress. As we have seen in earlier classes, many of the protections of the Bill of Rights, including the First Amendment, have been extended to state and local governments. Also, the prohibitions of the First Amendment apply to all branches of government, not merely the legislature. A court that enjoins a peaceful march or a local school board that fires a teacher for criticizing one of its policies would be in violation of the First Amendment. The First Amendment, however, does not apply to private action. The board of a private school could, in fact, fire one if it’s teachers for speaking out. On the other hand, despite the absolutist language “shall make no laws abridging…,” the Supreme Court has consistently allowed some governmental controls on speech. There are some types of speech, such as obscenity, that are not protected by the First Amendment. Governments may also place some reasonable controls on the time, place, and manner of communication, although they must do so very carefully in order to avoid a violation. Much of the case law in this area revolves around what kind of speech can be controlled and how the government may go about doing so. In many areas there are no clear lines separating constitutional from unconstitutional control of speech, and cases involving such line drawing have often been very controversial. A. What is Protected Speech? 1. Conduct versus Speech When the government tries to regulate or punish any kind of communication, a number of questions must be answered to determine if the controls will survive a constitutional challenge. The most basic is whether the conduct to be controlled qualifies as “speech.” This is not as simple as it may seem. Numerous activities that do not involve the use of words have been held to be speech, while in some cases, use of language, both written and oral, may not be considered speech. Examples of expressive conduct that have been held to be speech are wearing black armbands or burning the American flag to protest the Vietnam war. Although no words are spoken, the acts themselves are intended to communicate ideas and may be given the same protection as actual words. On the other hand, the government may punish painting words on a public building (graffiti), or threatening to reveal damaging secrets if not paid (blackmail), even though that conduct involves written or spoken words. 2. Is it Protected Speech? Next, it must be determined if the speech in question is protected by the First Amendment. Certain kinds of speech have not been given constitutional protection. For example, states may allow damage suits against persons who have made slanderous or libelous statements. Slander consists of orally making and libel consists of publishing false statements that are damaging to the reputation of another. Another example of unprotected speech is incitement to illegal action. Someone who stands before a crowd and encourages them to start a riot would not receive First Amendment protection. a. Obscenity Two particular kinds of unprotected speech, obscenity and fighting words, have given the courts particular difficulty. The Supreme Court has struggled to define obscenity. It has held that obscenity is “utterly without redeeming social importance,” and therefore “not within the area of constitutionally protected speech.” In order to declare material obscene, a court must determine: (a) that the average person, applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest (defined as a shameful or morbid interest in sex) and is designed to excite lustful thoughts, (b) that the work depicts or describes, in a patently offensive way, sexual conduct specifically prohibited by state law, and (c) that the work, taken as a whole lacks serious literary, artistic, political or scientific value. Defining the term has proven much easier than applying it. Justice Stewart once wrote of obscenity, “I know it when I see it, and the motion picture involved in this case is not that.” The Supreme Court has on numerous occasions overturned convictions for obscenity without giving any reasons other than simply stating that the material was not obscene. b. Fighting words The other difficult area of unprotected speech is “fighting words.” In 1942, in the case of Chaplinsky v. New Hampshire, the Supreme Court upheld the conviction of a man for giving a speech denouncing all religions as a racket and referring to one listener as “a God damned racketeer and a Fascist.” The Court found no constitutional protection for “fighting words,” defined as “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Although the Court has never overruled Chaplinsky, it has never again upheld a conviction for fighting words. Some activities held not to be fighting words, and therefore protected have been: burning the American flag, wearing a jacket with the words “fuck the draft,” the Ku Klux Klan’s burning of a white cross, and a Nazi march through a predominately Jewish neighborhood. The Court has held that in order for speech to be considered fighting words, it must normally be directed at an individual and not at a group. It has also held that authorities cannot use the mere possibility of a violent audience reaction to arrest a speaker. B. What Level of Protection does the Speech Receive? Not all constitutionally protected speech is given the same level of protection. Although it has not been put in a separate category, political speech has received the greatest protection. The Court has stated that the ability to criticize the government and government officials is central to the meaning of the First Amendment. On the other hand, some types of speech have been given somewhat less protection than other kinds of speech. One example of this is commercial speech. Until 1975 the Court had held that commercial speech was not constitutionally protected and could be broadly regulated by the states. Since then, however, the Court has given commercial speech significant protection, holding, for example, that a state could not prohibit pharmacies from advertising the prices of prescription drugs. However, the states still retain the right to regulate commercial speech in some ways that other types of speech could not be regulated. For example, a state may prohibit a manufacturer from making false or unsubstantiated claims about its product, but a state may not prohibit a politician from making unsubstantiated claims about his record. The Court has also given authorities more power to regulate speech in certain situations. While a private citizen could not be punished for using profanity, the Court has held that a public broadcaster can be punished for using profanity over the airwaves and a student may be punished for using profanity at school. Although public school students have some free speech rights, school authorities have much greater authority to control student speech than the government has to control citizens’ speech generally. C. How May Speech be Regulated? 1. Content Neutrality Any attempt to regulate speech must be content neutral; that is the government may not regulate speech based either on its subject matter or its viewpoint. An example of impermissible subject-matter regulation is an ordinance that prohibited any picketing in a certain neighborhood except labor picketing. An example of impermissible viewpoint regulation is an ordinance prohibiting signs critical of a foreign government within 500 feet of its embassy. Although regulation of signs within the area of foreign embassies might be allowed, the law cannot distinguish between favorable and unfavorable signs. 2. Prior Restraints The Court has established a strong presumption against prior restraint, the attempt to prohibit speech in advance. Even speech that may be punished after the fact normally may not be prohibited in advance. For example, if an author makes false and derogatory statements about an individual in a book, she may be sued by that individual for damages. It would be almost impossible, however, for that individual to stop publication or sale of that same book in advance. Although the Supreme Court has announced a few areas in which prior restraint might be tolerated, they have provided extraordinarily strict limitations. One exception mentioned by the Court has been for purposes of “national security.” It has stated that the government, on national security grounds, could prohibit a newspaper from publishing “the sailing dates of transports or the number and location of troops.” However, when the government tried to use this exception to prevent publication of the Pentagon Papers (excerpts from a top secret Defense Department history of the Vietnam War), the Court held that the government had not met its very difficult burden of showing immediate and irreparable damage to the Nation. Similarly, the Court has announced that prior restraint is theoretically available to preserve a defendant’s right to a fair trial. However, a judge must meet a very difficult three-part test to issue a gag order against the media prohibiting disclosure of facts relating to a criminal trial. The Court has not allowed such a gag order to stand in any case so far. 3. Vagueness and Overbreadth When the government attempts to regulate or prohibit speech, it must contend with the related doctrines of vagueness and overbreadth. In order not to be “void for vagueness,” any prohibition must make clear what speech is prohibited. This requirement is designed not only to be fair to the person being prosecuted, but also to prevent chilling the speech of other individuals, discouraging them from expression that is constitutionally protected, for fear it might be punished. A regulation is overbroad if it not only regulates unprotected speech, but also could be applied to protected speech. The best way for a state to protect its legislation from being held vague or overbroad is to describe, as narrowly and clearly as possible, what speech is prohibited. The problem, however, is that as the prohibition gets narrower and more specific, it runs a greater risk of being held to be unconstitutional content regulation. For example, the Court has held a statute prohibiting any “words or abusive language tending to cause a breach of the peace” void for vagueness and overbreadth. But a statute that prohibited the display of symbols known to “arouse anger, alarm or resentment in others on the basis of race, color, creed, religion, or gender” was held to draw unconstitutional content-based distinctions.

#### That means Koppelman 16 ends the competition debate – the Supreme Court has specifically not created an exception, and they don’t plan on it, which means revenge porn is definitively protected

#### And prefer Goldberg 16 – it analyzes every possible way legislators could try to criminalize revenge porn and concludes that they’re all unconstitutional – means that even if the Supreme Court changes its mind, revenge porn still wouldn’t be an exception

#### The counterplan competes through mutual exclusivity; the aff defends all constitutionally protected speech and revenge pornography is federally protected under the first amendment.

Harrison 15: [Anne Harrison (Student Writer for the Journal of Gender, Race & Justice), “Revenge Porn: Protected by the Constitution?” The Journal of Gender, Race & Justice. Vol 18. February 2015. <https://jgrj.law.uiowa.edu/article/revenge-porn-protected-constitution>] SF

Because the anti-revenge-porn criminal statutes at issue are content-based speech restrictions, the State has the burden of showing they meet strict scrutiny. While content-based speech restrictions are presumptively invalid, legal scholars argue that the Supreme Court has held “where matters of purely private significance are at issue, First Amendment protections are less rigorous.” One scholar on the subject posited that such laws are likely to be upheld because the specific nude pictures involved “have nothing to do with public commentary about society.” There is some support for the notion that the laws will be upheld as cyber-stalking laws have not been found to violate the First Amendment. Other scholars believe that anti-revenge porn statutes are criminalizing protected expression. They maintain that the “First Amendment is not a guardian of taste.” In its lawsuit against the state of Arizona, the ACLU argues that the Constitution protects speech even when that speech is offense or emotionally distressing. The ACLU goes on to state that the Arizona law is overbroad in that it applies equally to private photographs and images that are “truly newsworthy, artistic, and historical images.”